

AgriGeneral L.P. and United Food and Commercial Workers Union, Local 1059, Petitioner. Case 8-RC-15554

June 30, 1998

DECISION ON REVIEW

By Chairman Gould and Members Fox and Liebman

On July 1, 1997, the Regional Director for Region 8 issued a Decision and Direction of Election in which he concluded that the production and maintenance employees in the petitioned-for bargaining unit are not agricultural laborers within the meaning of the Act. In accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review, and the Petitioner filed a statement in opposition. By Order dated August 4, 1997, the Board granted the Employer's request for review. The Petitioner filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the entire record in this proceeding, we affirm the Regional Director's conclusion. We find, in agreement with the Regional Director, that the Employer failed to satisfy its burden of proving that the employees are agricultural laborers excluded from the coverage of the Act under Section 2(3).

In *Camsco Produce*, 297 NLRB 905, 908 (1990), the Board held that it would assert jurisdiction over individuals performing activities incidental to or in conjunction with farming operations "if any amount of farm commodities other than those of the employer-farmer are regularly handled by the employees in question." The Board further held that the party asserting

that individuals are exempt as agricultural laborers has the burden of proving the applicability of the exemption. In the present case, we find that the Regional Director properly found that the Employer did not meet its burden under *Camsco*, because it failed to establish that the unit employees do not regularly handle or come into contact with eggs received from outside producers.¹

Accordingly, the Regional Director's Decision and Direction of Election is affirmed, and the case is remanded to the Regional Director for further appropriate action.

¹ We disagree, however, with the Regional Director's further determination that under *Camsco* and *Cal-Maine Farms*, 307 NLRB 450 (1992), enf'd. 998 F.2d 1336 (5th Cir. 1993), allegations that individuals are agricultural laborers need not be analyzed on a classification-by-classification basis. In *Camsco*, the Regional Director found that the petitioned-for employees were agricultural laborers. The Board granted review only as to the fresh pack department employees, who handled produce from other farms, and ultimately found these workers to be statutory employees. Although the Board noted that the employer had "departed from the traditional model of the farmer who simply prepares his own products for market," the Board's analysis focused solely on the work of the particular employees in question. By denying review of the Regional Director's determination that the other members of the petitioned-for unit were agricultural laborers, the Board clearly indicated that the question of employee status would not be resolved on an employer-wide basis. *Cal-Maine* did not involve a classification-by-classification analysis because the employer made only the general assertion that it did not receive any products from outside suppliers and therefore that all of the employees in its processing plant were agricultural laborers. The Board found that the employer failed to meet its burden regarding that assertion.

Nevertheless, we agree with the Regional Director that the Employer failed to establish that only the shipping employees have contact with the outside eggs and that, for this reason, only the shipping employees are statutory employees. Accordingly, we affirm the Regional Director's finding that all of the unit employees are statutory employees.